IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4433 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMABEN @ RAHEMATBEN HASANAND SINDHI

Versus

COMMISSIONER OF POLICE

Appearance:

HL PATEL ADVOCATES for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard Mr.Vijay Patel, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 18-5-99 passed by

respondent No. 1 - The Commissioner of Police, Rajkot City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that in all 5 prohibition cases were registered against the petitioner at Rajkot City and Bhagatinagar police stations in between 17-5-98 to 13-5-99. That in each case, the country made liquor was seized from the possession of the petitioner / detenu and except last case, all 4 cases are pending for trial in the court.

#. Over and above two witnesses on assurance of anonymity have given information regarding the bootlegging activities of the petitioner vide statements dated 17-5-99 narrating the incidents dated 21-3-99 and 2-4-1999 respectively. That on the basis of the said material, the respondent No.1 as the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as while passing the impugned order, the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in 3 registered cases though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that in para 8 of grounds of detention, the respondent No.1 has averred that the petitioner has been getting bail in cases registered against her and in future also, is likely to get bail and having got herself released on bail, is likely to continue her anti social activities and and as such, detention order is necessary. However, as per the record, the petitioner was released on bail on 13-5-99. That the grounds of detention don't disclose any fact to infer that as to whether the detaining authority has ever considered the aspect of claiming of cancellation of bail as available under Section 437(5) of CrPC on account of material produced before him. On the contrary, the detaining authority has shown apprehension that the petitioner is likely to claim bail and having got herself released, is likely to continue her anti social activities. Thus, on account of said observation, non application of mind is apparent on face of grounds and as such, it is difficult to uphold the order in question.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 18-5-99 passed by respondent No. 1 - The Commissioner of Police, Rajkot City against the petitioner is hereby quashed and set aside. The petitioner - RAMABEN @ RAHEMATBEN HASANAND SINDHI is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

#kailash#